No. 18896

United States
Court of Appeals
for the Ninth Circuit.

EVELYN KASSAB,

Petitioner,

v

IMMIGRATION AND NATURALIZATION SERVICE,
UNITED STATES DEPARTMENT OF JUSTICE,

Respondent.

PETITIONER'S OPENING BRIEF

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TOPICAL INDEX

[STATUTE CITED]

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JURISDICTION OF THE COURT

The jurisdiction of this Court is based on 8 USC, § 1105a, as amended. The United States Court of Appeals has exclusive jurisdiction over a petition for review of an order of deportation. The venue shall be in the judicial circuit in which

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[Pet. designates Petition for Review; TR. designates Transcript of Record.]

the administrative proceedings were conducted or the residence of the petitioner.

Petitioner at all times concerned in these proceedings has been a resident of the County of Los Angeles and the proceedings before the Special Inquiry Officer were had in Los Angeles, California. [TR. pp. 44-47; 56; Pet. p. 2].

Petitioner duly took an appeal to the Board of Immigration Appeals seeking to vacate the Order of Deportation issued against her and asked that the matter be remanded to the District Director; on August 16, 1963 the Board of Immigration Appeals made an Order dismissing the appeal. [TR. pp. 3-5].

STATEMENT OF THE CASE

Petitioner is a native of Iraq and citizen of Israel, who was admitted to the United States on or about July 23, 1958 in the status of a non-immigrant going in transit through the United States. [TR. p. 6].

On November 12, 1958 her status was adjusted to a permanent resident of the United States and on March 13, 1962 her status as a permanent resident was rescinded by the District Director of the Immigration Service at Los Angeles. [TR. p. 6].

An appeal was taken to the Regional Commissioner who on May 7, 1962 affirmed the revocation decision of the

District Director and dismissed the appeal. [TR. p. 7].

Exhibit 6, introduced at the hearing before the Special Inquiry Officer, was a letter from the District Director dated May 16, 1962 addressed to the petitioner to the effect that the appeal was denied and stated THERE WAS NO FURTHER APPEAL AVAILABLE (emphasis ours). [TR. pp. 64-65; 87].

At the hearing before the Special Inquiry Officer, Petitioner through her counsel attacked the validity of the rescission proceedings and sought to show that the conclusion reached was in error in that petitioner was in fact entitled to her permanent resident status. This was denied to petitioner by the Special Inquiry Officer. [TR. pp. 74-75].

SPECIFICATION OF ERRORS

1. The Immigration Service committed error when it informed petitioner that "there is no further appeal available," when she was entitled to judicial review.

2. The Special Inquiry Officer erred in denying to petitioner the opportunity of showing that she was entitled to her permanent resident status.

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ARGUMENT

Petitioner is 27 years of age living with her husband and minor child in Los Angeles County, the child having been born in Los Angeles, thereby being a natural born citizen of the United States. [Pet. p. 2].

When the Immigration Service informed petitioner on May 16, 1962 that her appeal was denied and that "there is no further appeal available", she relied on it. The result was she did not have the opportunity to have the matter passed on by the courts to determine if the decisions of the District Director and the ruling of the Regional Commissioner were correct or justified.

In view of all of the circumstances of the case, petitioner should have been allowed the opportunity of showing that the conclusion reached in the rescission proceedings was erroneous and that in fact she was entitled to her permanent resident status.

The record discloses that petitioner obtained a visa from the Legation of Mexico in Tel Aviv, Israel on July 11, 1958 to go to Mexico City, Mexico and meet her relative there. On July 7, 1958 a Transit visa #TVL-189 was issued to petitioner by the American Embassy at Tel Aviv, Israel. On July 23, 1958 petitioner entered the United States as a non-immigrant through the Port of New York to go in transit to Mexico. [TR. p. 93].

Petitioner had no intention of remaining in the United States when she entered on July 23, 1958. Her sole purpose was to go to Mexico until she saw her sponsor, who was looking for a nurse for his children and offered her a nursing position. She accepted it and worked for her sponsor as a children's nurse. [Pet. p. 3].

A certificate was issued to her by the Tel-Hashomer Hospital showing she had been a registered nurse employed by the hospital in the childrens' ward from 1953 until April, 1958. [Pet. p. 4].

Letters were filed with the Immigration Service attesting to petitioner's contention that she was entitled to her permanent resident status. [TR. pp. 96-100; Vol. II, pp. 7-9].

Fair play requires that semantics not be permitted to thwart common sense or justice. Immigration Service now contends that when it stated "there is no further appeal available" it meant there was no further administrative appeal allowed. However, if that is what the Service meant it should have so stated. Petitioner had a right to believe and did believe, that when she received an official communication from an agency of the United States government stating that "there is no further appeal available", it meant she had exhausted her remedies.

The Service was not required to make the statement;

since it took the initiative to make the statement, fairness would require it to inform petitioner that even though there was no further administrative appeal, she had recourse to the courts.

It is clear petitioner was misled, and therefore is entitled to have the matter re-opened so she may exhaust all of her remedies and have her rights protected.

Counsel for petitioner has not been able to find a case in point which would be of assistance to the Court in determining whether the final Order of Deportation is valid under the circumstances which occured in this situation. Counsel respectfully submits that this Court should establish the principle which will allow a reversal of the Order of the Immigration Service so that a full and complete opportunity will be afforded petitioner to establish her right to remain in the United States as a permanent resident.

To uphold the deportation Order would be an invasion of human rights. She should not be separated from her infant son who is an American citizen and she should not be required to remove her son, an American citizen, from the shores of the United States.

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C O N C L U S I O N

Based on the foregoing principles it is urged that the Court review the decision ordering the deportation of petitioner and that on the review should remand the case to the District Director for further proceedings so that (1) she may establish her right to remain in the United States as a permanent resident and (2) that there may be a court review of the decision revoking her status as a permanent resident.

Respectfully submitted,

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By: MURRAY M. CHOTINER

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CERTIFICATION

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/

Murray M. Chottiner
Attorney for Petitioner.

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APPENDIX